

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HELEN SWARTZ,

Plaintiff,

-v.-

44 LEXINGTON ASSOCIATES, LLC,

Defendant.

23 Civ. 07601 (JHR)

ORDER OF DISMISSAL

JENNIFER H. REARDEN, District Judge:

On August 28, 2023, Plaintiff filed the Complaint in this action, ECF No. 1, which Plaintiff amended on September 7, 2023, ECF No. 6. On September 19, 2023, Defendant was served with process. *See* ECF No. 9. Defendant's response was due on October 10, 2023. *See id.*; *see also* Fed. R. Civ. P. 12(a)(1)(A)(i) (“A defendant must serve an answer . . . within 21 days after being served with the summons and complaint.”). Defendant has not responded to the Complaint or otherwise appeared.

On October 12, 2023, the Court issued an Order to Show Cause, directing Plaintiff to show why this action should not be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41. ECF No. 10. The Court’s October 12 Order informed Plaintiff that cause may be shown by requesting a certificate of default from the Clerk of Court, and, by October 20, 2023, filing a motion for default judgment. *Id.* at 1. The Court cautioned that “[f]ailure to submit a timely and proper motion for default judgment may result in dismissal without prejudice of this case under Federal Rule of Civil Procedure 41.” *Id.* Since that Order was issued, Plaintiff has not requested a certificate of default, filed a motion for default judgment, or otherwise taken any action to make progress in this case.

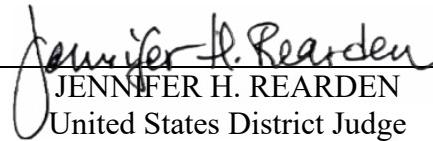
Accordingly, under Federal Rule of Civil Procedure 41(b) and the Court’s inherent power, *see Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-32 (1962), the Court hereby dismisses

this case, without prejudice, for failure to prosecute.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: October 23, 2023
New York, New York



JENNIFER H. REARDEN
United States District Judge